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February 14, 2011

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

ENTERED
Office of Proceedings
FEB 14 2011
Part of
Public Record

Re: STB No. 42120, Cargill, Incorporated v. BNSF Railway Company

Dear Ms. Brown:

Cargill, Incorporated ("Cargill") filed its Complaint in this case with the Board on April 19, 2010. Paragraph 5 of the Complaint defines the "Assailed Tariff Item" as Item 3375L, Section B and all predecessor and successor iterations:

5. BNSF invoices, and Cargill pays, a fuel surcharge on common carrier transportation services provided by BNSF to Cargill. This surcharge is set forth currently in BNSF Rules Book 6100-A, Item 3375L, Section B (a copy of which is appended in Exhibit A hereto) and is incorporated by reference in BNSF's common carrier pricing authorities applicable to Cargill's traffic. Item 3375L, Section B, and its predecessor and successor iterations, shall hereinafter be referred to as the "Assailed Tariff Item."

Item 3375L is a mileage-based fuel surcharge with a strike price of \$1.25 per gallon.

On December 17, 2010, Defendant BNSF Railway Company ("BNSF") published a notice on its website (copy in Attachment 1) stating that "BNSF's strike price for our fuel surcharge program will be reset from \$1.25 per gallon to \$2.50 per gallon beginning January 2011" and "[t]ariff changes for Agricultural Products customers are targeted for early March 2011." BNSF has also published a tariff item, currently set forth

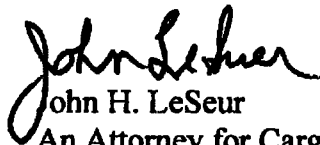
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in BNSF Rules Book 6100-A, Item 3376D, Section B (copy in Attachment 2), that contains a mileage-based fuel surcharge with a strike price of \$2.50 per gallon.

While Cargill believes that Item 3376D, Section B (or any other rebased fuel surcharge that might be applied to its common carrier traffic) is a "successor" to Item 3375L, Section B, Cargill hereby expressly supplements its Complaint to include Item 3376C, or any other fuel surcharge tariff item (regardless of its numerical designation) that is applied to its common carrier shipments.

Cargill requests that this letter and Attachments 1 and 2 be included in the record for this proceeding

Respectfully submitted,



John H. LeSeur
An Attorney for Cargill, Incorporated

Enclosures

cc: Counsel for BNSF Railway Company



Ag Marketing Pricing News

12/17/2010

Ag Fuel Surcharge Implementation - Clarification

BNSF's strike price for our fuel surcharge program will be reset from \$1.25 per gallon to \$2.50 per gallon beginning January 2011. Tariff changes for Agricultural Products customers are targeted for early March 2011. Please refer to the \$1.25 per gallon fuel surcharge rates until the tariff revision is published. Contracts will be addressed as they renew.

Tables reflecting the new strike price and other program details are available on the BNSF website at <http://www.bnsf.com/customers/fuel-surcharge/>.

If you have any questions, please call your representative.

Your business is important to us. Thank you for choosing BNSF as your transportation service provider.

If you have any questions, please send an e-mail to Customer.Notifications@bnsf.com

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**BNSF RAILWAY COMPANY
BNSF RULES BOOK 6100-A
(Cancels BNSF Rules Book 6100)**

**CONTAINING
RULES, REGULATIONS AND SPECIAL CHARGES
GOVERNING
THE TRANSPORTATION OF FREIGHT
ON
BNSF RAILWAY COMPANY
IN
THE UNITED STATES, MEXICO AND CANADA
AND
REGULATIONS GOVERNING CURRENCY EXCHANGE ON TRAFFIC
FROM, TO AND BETWEEN STATIONS IN CANADA
AND
CAR HIRE ON TRAFFIC TO OR FROM MEXICO**

For explanation of abbreviations / reference marks, see Item 110

ALSO APPLICABLE ON INTRASTATE TRAFFIC

ISSUED DECEMBER 29, 2000

EFFECTIVE JANUARY 1, 2001

Issued by J. C. Engstrom, P. O. Box 961069, Ft. Worth, TX 76161-0069

BNSF Rules Book 6100 – A

***Item 3376-D - Charge – Carload Percentage Based and Mileage Based Fuel Surcharge (\$2.50 Strike Price)
Issued December 1, 2010 – Effective January 1, 2011 (Increase)***

General – Refer to Item 3374 for General Rules and Methodology for calculating the fuel surcharge.

- **Section A** of this item contains the Percentage Based Fuel Surcharge
- **Section B** of this item contains the Mileage Based Fuel Surcharge

Section A: Percentage Based Fuel Surcharge:

Application - Applies on the following carload shipments:

- **EXEMPT** shipments, not moving under contracts/private price authorities (except as otherwise provided):
 - For a list of Exempt Commodities, please refer to 49 CFR 1039, which is available online at http://www.access.gpo.gov/nara/cfr/waisidx_00/49cfr1039_00.html
 - Including shipments in boxcars.
- Or, Shipments moving under contracts/private price authorities with an effective date of 1/1/2011 or after unless otherwise stated.
- Or, Shipments moving under price authorities referring specifically to this item (3376 Section A).
- Except Agricultural Commodities. For a list of agricultural commodities, please refer to BNSF web page at [Agricultural Commodities](#).

A fuel surcharge applies as shown in the Fuel Surcharge Table in this section.

When the U. S. Average Price of Retail On-Highway Diesel Fuel (HDF) monthly average equals or exceeds \$2.50 per gallon;

- A positive fuel surcharge will apply on the applicable linehaul freight charges.
- The fuel surcharge will be included as a separate line item on the invoice for freight charges for each shipment.

When the U. S. Average Price of Retail On-Highway Diesel Fuel (HDF) monthly average is less than \$2.50 per gallon and equals or exceeds \$1.25 per gallon;

- When BNSF is the collecting carrier of linehaul freight charges, a negative fuel surcharge will apply only on BNSF's portion of the linehaul freight charges unless otherwise stated.
- A negative fuel surcharge will not be assessed to other carriers' portions of the linehaul freight charges, and their portions will not be included in the calculation.
- The negative fuel surcharge will be included as a deduction in a separate line item on the invoice for freight charges for each shipment.
- When BNSF is not the collecting carrier of linehaul freight charges, no negative fuel surcharge will apply.

(Item continued on next page)

BNSF Rules Book 6100 – A**Item 3376-D – Charge- Carload Percentage Based and Mileage Based Fuel Surcharge (\$2.50 Strike Price)
(Item Continued)****Section A: Percentage Based Fuel Surcharge**

| Carload Percentage Based Fuel Surcharge Table | | | |
|--|----------------------------------|--|----------------------------------|
| Time Periods Average Price of HDF Between | Applicable Fuel Surcharge | Time Periods Average Price of HDF Between | Applicable Fuel Surcharge |
| Each \$0.05 HDF per gallon decrease thereafter to \$1.25 | Decrease 0.5% | \$2.90 to \$2.949 | 4.5% |
| \$1.70 to \$1.749 | -7.5% | \$2.95 to \$2.999 | 5.0% |
| \$1.75 to \$1.799 | -7.0% | \$3.00 to \$3.049 | 5.5% |
| \$1.80 to \$1.849 | -6.5% | \$3.05 to \$3.099 | 6.0% |
| \$1.85 to \$1.899 | -6.0% | \$3.10 to \$3.149 | 6.5% |
| \$1.90 to \$1.949 | -5.5% | \$3.15 to \$3.199 | 7.0% |
| \$1.95 to \$1.999 | -5.0% | \$3.20 to \$3.249 | 7.5% |
| \$2.00 to \$2.049 | -4.5% | \$3.25 to \$3.299 | 8.0% |
| \$2.05 to \$2.099 | -4.0% | \$3.30 to \$3.349 | 8.5% |
| \$2.10 to \$2.149 | -3.5% | \$3.35 to \$3.399 | 9.0% |
| \$2.15 to \$2.199 | -3.0% | \$3.40 to \$3.449 | 9.5% |
| \$2.20 to \$2.249 | -2.5% | \$3.45 to \$3.499 | 10.0% |
| \$2.25 to \$2.299 | -2.0% | \$3.50 to \$3.549 | 10.5% |
| \$2.30 to \$2.349 | -1.5% | \$3.55 to \$3.599 | 11.0% |
| \$2.35 to \$2.399 | -1.0% | \$3.60 to \$3.649 | 11.5% |
| \$2.40 to \$2.449 | -0.5% | \$3.65 to \$3.699 | 12.0% |
| \$2.45 to \$2.499 | 0.0% | \$3.70 to \$3.749 | 12.5% |
| \$2.50 to \$2.549 | 0.5% | \$3.75 to \$3.799 | 13.0% |
| \$2.55 to \$2.599 | 1.0% | \$3.80 to \$3.849 | 13.5% |
| \$2.60 to \$2.649 | 1.5% | \$3.85 to \$3.899 | 14.0% |
| \$2.65 to \$2.699 | 2.0% | \$3.90 to \$3.949 | 14.5% |
| \$2.70 to \$2.749 | 2.5% | \$3.95 to \$3.999 | 15.0% |
| \$2.75 to \$2.799 | 3.0% | \$4.00 to \$4.049 | 15.5% |
| \$2.80 to \$2.849 | 3.5% | \$4.05 to \$4.099 | 16.0% |
| \$2.85 to \$2.899 | 4.0% | Each \$0.05 HDF per gallon increase | Additional .5% |

(Item continued on next page)

BNSF Rules Book 6100 – A***Item 3376-D – Charge – Carload Percentage Based and Mileage Based Fuel Surcharge (\$2.50 Strike Price)***
(Item Continued)**Section B: Mileage Based Fuel Surcharge:****Application - Applies on the following carload shipments:**

- Regulated shipments (except as otherwise provided):
 - When an Item covering BNSF Fuel Surcharge refers to Regulated Commodities, it refers to all commodities except those that are EXEMPT; for a list of EXEMPT commodities, please refer to 49 CFR 1039, which is available online at:
http://www.access.gpo.gov/nara/cfr/waisidx_00/49cfr1039_00.html
 - Excluding shipments in boxcars.
- Or Agricultural Commodities (including regulated and exempt shipments). For a list of agricultural commodities, please refer to BNSF web page at [Agricultural Commodities](#). See Geographical Definitions and Exceptions below.
- Or Shipments moving under pricing authorities referring specifically to this item (3376 Section B).

A fuel surcharge applies as shown in the Fuel Surcharge Table in this section.

When the U. S. Average Price of Retail On-Highway Diesel Fuel (HDF) monthly average equals or exceeds \$2.50 per gallon;

- A positive fuel surcharge will apply on the applicable linehaul freight charges.
- The fuel surcharge will be included as a separate line item on the invoice for freight charges for each shipment.

When the U. S. Average Price of Retail On-Highway Diesel Fuel (HDF) monthly average is less than \$2.50 per gallon and equals or exceeds \$1.25 per gallon;

- When BNSF is the collecting carrier of linehaul freight charges, a negative fuel surcharge will apply only on BNSF's portion of the linehaul freight charges unless otherwise stated.
- A negative fuel surcharge will not be assessed to other carriers' portions of the linehaul freight charges, and their portions will not be included in the calculation.
- The negative fuel surcharge will be included as a deduction in a separate line item on the invoice for freight charges for each shipment.
- When BNSF is not the collecting carrier of linehaul freight charges, no negative fuel surcharge will apply.

Geographical Definitions and Exceptions –

- For Agricultural Commodities only:
 - **Pacific North West (PNW)** export destinations will be grouped using Seattle, WA as destination upon which the mileage based fuel surcharge will be calculated for all whole grain (STCC 011) shipments from all BNSF origin states except California, Oregon, or Washington.
 - Export destinations will be as follows: **PNW Group:** Rivergate, OR, Portland, OR, Kalama, WA, Longview, WA, Seattle, WA, Tacoma, WA and Vancouver, WA. As an example, the fuel surcharge from Alton, ND to Vancouver, WA will be calculated using the miles from Alton, ND to Seattle, WA (1,496 miles).
 - **Texas Gulf** export facilities will be grouped using Houston, TX as the destination upon which the mileage based fuel surcharge will be calculated for all whole grain (STCC 011 and STCC 2041979) shipments.
 - Export destinations will be as follows: **Texas Gulf Group:** Beaumont, Corpus Christi, Galena Park, Galveston, Houston and Port of Brownsville, TX. Shipments must be unloaded at these destinations. As an example, the fuel surcharge from Wichita, KS to Galveston, TX will be calculated using the miles from Wichita, KS to Houston, TX (632 miles).

(Item continued on next page)

BNSF Rules Book 6100 – A**Item 3376-D - Charge – Carload Percentage Based and Mileage Based Fuel Surcharge (\$2.50 Strike Price)
(Item Concluded)****Section B: Mileage Based Fuel Surcharge**

| Carload Mileage Based Fuel Surcharge Table | | | |
|--|--------------------------------------|-------------------------------------|--------------------------------------|
| Price of HDF Between | Fuel Surcharge Cents per Mile | Price of HDF Between | Fuel Surcharge Cents per Mile |
| Each \$0.04 HDF per gallon decrease thereafter to \$1.25 | Decrease 0.01 per mile | \$2.98 to \$3.019 | 0.13 |
| \$1.90 to \$1.939 | -0.14 | \$3.02 to \$3.059 | 0.14 |
| \$1.94 to \$1.979 | -0.13 | \$3.06 to \$3.099 | 0.15 |
| \$1.98 to \$2.019 | -0.12 | \$3.10 to \$3.139 | 0.16 |
| \$2.02 to \$2.059 | -0.11 | \$3.14 to \$3.179 | 0.17 |
| \$2.06 to \$2.099 | -0.10 | \$3.18 to \$3.219 | 0.18 |
| \$2.10 to \$2.139 | -0.09 | \$3.22 to \$3.259 | 0.19 |
| \$2.14 to \$2.179 | -0.08 | \$3.26 to \$3.299 | 0.20 |
| \$2.18 to \$2.219 | -0.07 | \$3.30 to \$3.339 | 0.21 |
| \$2.22 to \$2.259 | -0.06 | \$3.34 to \$3.379 | 0.22 |
| \$2.26 to \$2.299 | -0.05 | \$3.38 to \$3.419 | 0.23 |
| \$2.30 to \$2.339 | -0.04 | \$3.42 to \$3.459 | 0.24 |
| \$2.34 to \$2.379 | -0.03 | \$3.46 to \$3.499 | 0.25 |
| \$2.38 to \$2.419 | -0.02 | \$3.50 to \$3.539 | 0.26 |
| \$2.42 to \$2.459 | -0.01 | \$3.54 to \$3.579 | 0.27 |
| \$2.46 to \$2.499 | 0.00 | \$3.58 to \$3.619 | 0.28 |
| \$2.50 to \$2.539 | 0.01 | \$3.62 to \$3.659 | 0.29 |
| \$2.54 to \$2.579 | 0.02 | \$3.66 to \$3.699 | 0.30 |
| \$2.58 to \$2.619 | 0.03 | \$3.70 to \$3.739 | 0.31 |
| \$2.62 to \$2.659 | 0.04 | \$3.74 to \$3.779 | 0.32 |
| \$2.66 to \$2.699 | 0.05 | \$3.78 to \$3.819 | 0.33 |
| \$2.70 to \$2.739 | 0.06 | \$3.82 to \$3.859 | 0.34 |
| \$2.74 to \$2.779 | 0.07 | \$3.86 to \$3.899 | 0.35 |
| \$2.78 to \$2.819 | 0.08 | \$3.90 to \$3.939 | 0.36 |
| \$2.82 to \$2.859 | 0.09 | \$3.94 to \$3.979 | 0.37 |
| \$2.86 to \$2.899 | 0.10 | \$3.98 to \$4.019 | 0.38 |
| \$2.90 to \$2.939 | 0.11 | \$4.02 to \$4.059 | 0.39 |
| \$2.94 to \$2.979 | 0.12 | Each \$0.04 HDF per gallon increase | Additional \$0.01 per mile |